

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GISSELLE RUIZ,
individually and on behalf of all others
similarly situated,

Plaintiff

v.

Civil Action No. 05-11052-NMG

BALLY TOTAL FITNESS HOLDING CORPORATION, a Delaware corporation, and
HOLIDAY UNIVERSAL, INC., a Delaware corporation,

Defendants.

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY ON
PENDING MOTION TO DISMISS**

Defendants Bally Total Fitness Holding Corporation and Holiday Universal, Inc. hereby file as supplemental authority the Supreme Judicial Court's Order in Albats v. Town Sports Int'l, Inc. d/b/a Boston Sports Club, No. 2002-04910 (Mass. Super. May 10, 2004), *aff'd*, (Mass. Jan. 20, 2006) (No. SJC-09432) affirming the judgment of the Superior Court in that case, which was referenced in Defendants' Reply Memorandum in Support of Motion to Dismiss First Amended Class Action Complaint Pursuant to Rules 12(b)(2) and 12(b)(6) [Docket No. 30] and was attached to Defendants' Motion to Stay Discovery and/or For Protective Order Pending Resolution of Defendants' Motion to Dismiss as Exhibit A [Docket No. 35, found moot by the Court on May 30, 2006]. A copy of this Order is attached hereto as Exhibit A.

The Defendants respectfully request that the Court consider this Order in ruling upon their Motion to Dismiss First Amended Class Action Complaint Pursuant to Rule 12(b)(2) and 12(b)(6).

Respectfully submitted,

BALLY TOTAL FITNESS HOLDING
CORP. and HOLIDAY UNIVERSAL, INC.,

By their attorneys,

/s/ Erica Tennyson

Howard M. Cooper (BBO #543842)

Juliet A. Davison (BBO #562289)

Erica Tennyson (BBO #660707)

Todd & Weld LLP

28 State Street, 31st Floor

Boston, MA 02109

(617) 720-2626

etennyson@toddweld.com

Norman T. Finkel

William R. Klein

Young, Finkel & Silbert, Ltd.

33 N. LaSalle St., #900

Chicago, IL 60602

(312) 782-2555

Dated: June 1, 2006

CERTIFICATE OF SERVICE

I, Erica Tennyson, hereby certify that Defendants' Notice of Supplemental Authority on Pending Motion to Dismiss filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on June 1, 2006.

/s/ Erica Tennyson
Erica Tennyson

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

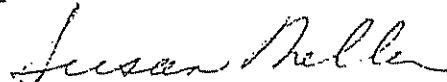
SUPREME JUDICIAL COURT
SJC-09432

YEVGENIA ALBATS vs. TOWN SPORT INTERNATIONAL, INC., & another.

ORDER

The judgment of the Superior Court is affirmed by an equally divided court.

By the Court,



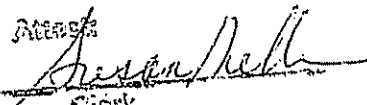
Susan Mellen, Clerk

Entered: *January 20, 2006*

RECEIVED

5/8/06

Attest



Clerk